up was not *bona fide*. In coming to that conclusion, he was largely influenced by the fact that the accounts had in fact been finalised.

The other two grounds of appeal are to the effect that there were important issues in dispute between the plaintiff and the defendant. The learned trial judge was fully aware of this and it was for that reason that he granted leave to defend, but, to reiterate what I have said before, he took the view that the defence as to the residue of the claim was not made *bona fide*. It was for that reason that leave to defend was granted on condition of payment into court of the sum in dispute. It is true that a defendant must be given unconditional leave to defend unless it is clear that there is no real substantial question to be tried or that there is no dispute as to facts or law which raises a reasonable doubt that the plaintiff is entitled to judgment (see *Jacobs v. Booth's Distillery Co.*),[1] but when there is something suspicious in the defendant's mode of presenting his case or where the court is left with a real doubt about the defendant's good faith, even though it cannot be said for certain that there is not a triable issue, it is entitled to make an order that the defendant do pay the amount claimed or any lesser sum into court or furnish security for that amount as a condition for leave to defend (see *Fieldrank Ltd. v. Stein*).[2]

I would dismiss this appeal with costs.

Azmi L.P. and Suffian F.J. concurred.

Appeal dismissed.

Solicitors: *Williams & Co.; Donaldson & Burkinshaw.*

HUSSEIN & ANOR. v. MAIDEN

[F.C. (Azmi L.P., Suffian & Gill F.JJ.) September 13, 1969]

[Kuala Lumpur — Federal Court Civil Appeal No. X. 75 of 1968]

Negligence — Collision on highway — Personal injury — Apportionment of liability — Whether appellate court can interfere.

This was an appeal against the judgment of the High Court in which the learned judge found that both the plaintiff and the second defendant were negligent on a 50-50 basis.

Held, dismissing the appeal: (1) in this case both the motorist and the cyclist could have seen each other if they had taken a proper lookout, the motorist owed a duty when travelling on a major road to be on the lookout for other users of the road coming out of a minor road and if he failed to do so he must also be regarded as being negligent;

(2) the appellate court should not interfere with the apportionment of liability by the trial judge as there was nothing exceptional in this case and there was no error of principle.

Cases referred to:—

(1) *Harding (An Infant)* v. *Hinchcliffe*, The Times, April 8, 1964 C.A.

(2) *Williams* v. *Fullerton* (1961) 105 Sol. J. 280.

(3) *Owners of British Fame* v. *Owners of Macgregor, The Macgregor* [1943] A.C. 197.

(4) *Brown & Anor.* v. *Thomson* [1968] 2 All E.R. 708.

FEDERAL COURT

Edgar Joseph Jr. for the appellants.

D.A. Devadason for the respondent.

Cur. Adv. Vult.

Azmi L.P.: This is an appeal by the defendants against the judgment of the High Court at Johore Bahru in which the learned judge found that both the plaintiff and the second defendant were negligent on a 50-50 basis. The first defendant was sued as the employer of the second defendant. Originally the appeal was against both liability and the quantum of damages but at the hearing, counsel for the defendants abandoned the appeal against quantum.

The parties in the suit alleged negligence against each other resulting in a collision between the plaintiff on a bicycle and the second defendant driving a motor-car.

The facts may be summarised briefly as follows. On 28th February 1964, at about 10.45 a.m. the plaintiff, according to his evidence and that of his witness Moorthy, stopped at the junction where Jalan Lama meets Jalan Bentayan. Plaintiff intended to cross the road to the opposite side of Jalan Bentayan and then to turn right in the direction of Jalan Abdullah. It was then raining slightly. His evidence was that after he stopped at the junction, looked left and right and seeing no other vehicles on the road, he proceeded to cross the road and went in the direction of Jalan Abdullah. The next thing he knew was he was in hospital.

Moorthy's evidence was that he was sitting in a coffee shop on the opposite side of Jalan Bentayan and almost directly opposite the junction and that he saw the plaintiff cross the road and being hit by the car coming from the direction of Jalan Abdullah and being thrown on the car and shattering the windscreen.

The plaintiff's wife who, according to the evidence of plaintiff and her own, was with the plaintiff, just before the accident, had at the time of the accident left him and was some distance away. She was called, however, to give evidence primarily to support the presence of Moorthy at the scene. It was the defendant's contention that Moorthy was never at the scene and the cross-examination of this witness was directed mainly in support of that contention.

Sergeant Othman who investigated the accident drew up Plan P. 2 and according to the plan, broken glasses were found at the junction and he also found a bicycle and one rubber shoe lying some distance from the junction in the direction of Jalan Bakri which is the opposite direction to that of Jalan Abdullah.

The defendant's evidence was that he was driving about 20 to 30 miles per hour and when he came up to the junction he suddenly saw a cyclist dash out from Jalan Lama across Jalan Bentayan and the cyclist knocked his car. He then swerved to the right and stopped the car. The photographs of the car showed that it had a dent in the centre of the bonnet and the bicycle was mainly damaged on its front wheel. The second defendant also said that the plaintiff was in the middle of the road when the collision took place. In the course of his examination-in-chief the defendant said this: "Suddenly on nearing the junction of Jalan Lama a cyclist dashed out from Jalan Lama into Jalan Bentayan. The cyclist knocked at my car and I tried to swerve to my right." In answer to a question by the learned judge the second defendant explained: "By 'suddenly' I meant that both the cyclist and I reached the point of impact simultaneously. I was not aware of the cyclist coming from the junction as it was raining heavily."

It would appear to me that though the learned judge believed that Moorthy was present at the scene and saw the accident, the learned judge, however, did not accept wholly the version of the accident as affirmed by the plaintiff and Moorthy. The learned judge expressed the view that it was necessary to examine Moorthy's evidence in the light of what, to use his own words "could be reasonably inferred from the sketch and the photographs." Having done that he came to the conclusion that the plaintiff having stopped at the junction and seeing that it was safe to cross had got on to the bicycle, but he also believed that the plaintiff was not looking in front when he started to ride the bicycle and that the plaintiff in crossing the road had not gone at a right angle to the other side but had gone slightly diagonally to the right. He came to that conclusion because of the presence of broken glasses at the places shown on the plan. The learned judge also found as a fact that the second defendant was also not on the look-out and did not know the presence of the plaintiff until his car collided with the bicycle. He also therefore found that the driver was at fault.

In the final analysis he came to the conclusion that both parties were equally at fault and I think he did so mainly on the ground that there was also a duty on the part of a person driving along a major road to be on the look out for any person coming out of a minor road.

Before us it was urged that the judge was wrong in law and several cases were cited to us in support. In the case of *Harding (An Infant) v. Hinchcliffe,*[1] a motor cyclist was following a bus on a major road. The bus after signalling, turned to the left into a minor road, the cyclist moved towards the centre of the road to overtake the bus just before that. In the meantime a motor-car was coming out of the minor road into the major road, and collided with the cyclist, on the major road. The trial judge found that the motorist could not have anticipated the motor cyclist, being masked by the bus for the time and distance, and that both drivers had denied that they saw the other before the accident, because each was masked from the other by the bus. The Court of Appeal held that the motorist should have waited the few extra seconds necessary to let the bus get completely into the minor road because there was always the possibility of the vehicle being masked by the bus as he the motorist himself was coming from a lane into a major road. In that case, the Court of Appeal took the view that the motorist alone was negligent. In my view the Court of Appeal considered that the motorist was wholly to blame not only because he was coming out of a minor road into a major road but also because both the motorist and the cyclist were masked by the bus during those few seconds.

In the present case, however, both the motorist and the cyclist could have seen each other if they had taken a proper look-out and in my view the motorist also owed a duty when travelling on a major road to be on the look-out for other users of the road coming out of a minor road and if he failed to do so he must also be regarded as being negligent (See *Williams v. Fullerton*).[2]

I would therefore dismiss the appeal on the question of liability.

We were also asked to reconsider the judge's apportionment of responsibility. It has been stated that the apportionment of responsibility is more in the nature of an exercise of a discretion than a finding of fact and though an appellate court has power to review the apportionment this will be done only in very exceptional circumstances. (See *Owners of British Fame v. Owners of Macgregor, The Macgregor*).[3] The headnote in *Brown and Another v. Thompson*[4] states the principle as follows:—

"In apportioning liability under the Law Reform (Contributory Negligence) Act, 1945, s. 1(1) the emphasis is on fault and not solely on the causative potency

of the acts of either party; where a trial judge has apportioned liability accordingly, his apportionment should not be interfered with on appeal, save in exceptional cases (as where there is some error in principle) or the apportionment is clearly erroneous, and an appellate court will not consider itself free to substitute its own apportionment for that made by the trial judge.

A like principle governs the intervention of an appellate court on appeal on quantum of damages."

I do not consider that the present case is exceptional or one where there is an error in principle. In the circumstances I decline to review the apportionment made by the learned trial judge.

I would therefore dismiss the appeal with costs.

Suffian and Gill F.JJ. concurred.

Appeal dismissed.

Solicitors: *Joseph & Son; D.A. Devadason.*

YEOW TIONG KOK v. COLLECTOR OF LAND REVENUE, PORT DICKSON

[F.C. (Azmi L.P., Ong Hock Thye C.J. (Malaya) & Suffian F.J.) September 19, 1969]

[Kuala Lumpur — Federal Court Civil Appeal No. X. 18 of 1968]

Land Laws — Acquisition of land — Award of collector based on report of valuer — Market value — Comparative method of valuation — Land Acquisition Act, 1960.

In this case the collector had given an award of $87,625 for resumption by the State Government of certain land on the Port Dickson — Seremban main road. The collector had based his award on the recommendation of the valuation officer, an official of the Treasury Valuation Department. There were comparative sales of land but these were ignored by the valuer. On reference to the High Court, the award of the collector was affirmed. On appeal,

Held: (1) the learned judge in this case had leaned too heavily on the opinion of the valuer as did the assessors also in rejecting the comparable sales;

(2) in the circumstances the valuation of the valuer in this case was erroneous and therefore the collector's award and the judgment of the High Court affirming it should be set aside.

Cases referred to:—

(1) *Chuah Say Hai* v. *C.L.R. Kuala Lumpur* [1967] 2 M.L.J. 99, 100-1.

(2) *Aik Hoe & Co. Ltd.* v. *Superintendent of Lands & Surveys* [1968] 1 M.L.J. 293.

FEDERAL COURT

Ng Ek Teong (*Lee Boon Peng* and *Vincent Ponniah* with him) for the appellant.

Hassan bin Ishak (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Ong Hock Thye C.J. (Malaya): This is an appeal from the decision of the High Court at Seremban, upon a reference under section 37 of the Land Acquisition Act, 1960, affirming an award of $87,625 by the Collector of Land Revenue for resumption by the State Government of a parcel of land 179,946 square feet in area. The appellant, who was the proprietor, claims that the market value of his land at the relevant date, June 16, 1966, was $2 per square foot. It was valued by the collector at approximately 46 cents per square foot.

The land is Lot 1685 situate within the Port Dickson Town Boundary, on the Port Dickson-Seremban main road, about one mile from the town centre. It enjoys the benefit of a road frontage of 325 feet along this main highway and a return frontage of 625 feet along a new access road running in an easterly direction from the main road. The surface is level generally, of the same height as the main road. Water and light are available and laid on to a semi-permanent dwelling-house thereon. There were no implied or express conditions on the title to impede development of this property. The premium required for conversion of agricultural land would be $5,000 per acre, otherwise payable, but not in this case.

Notice of intention to acquire this land was published in the *Gazette* on June 16, 1966 which became the relevant date for assessment of its market value. On August 26, 1966, the Collector of Land Revenue, Port Dickson, held an inquiry and on the same day made his award, assessing the compensation at $87,625, or $20,000 per acre. Evidence was produced at this inquiry that the appellant had purchased the land on May 11, 1966 for $359,914, at the rate of $2 per square foot. The collector, however, based his award "on the recommendation of the valuation officer", an official of the Treasury Valuation Department. This collector, who had come to Port Dickson as recently as March 1966, frankly admitted that he had no idea of local land values but relied entirely on the valuer's report. He did not make an independent valuation: as he put it, "What the valuer says is good enough for me as he is an expert".

The report referred to is Exhibit R.25. Of the appellant's purchase the valuer had this to say:—

"The present owner bought the land under valuation i.e. Lot 1685 together with Lot 1687 on 11.5.1966 for $359,914 i.e. approximately $85,450 per acre or about $2 per foot super. . . . I understand that the two parties are brothers and as such the conveyance cannot be considered as a *bona fide* sale and were (*sic*) merely arranged by the two parties, fearing that the land might be compulsorily acquired by the National Electricity Board or the proposal to acquire this land for the school might have leaked out before *Gazette* notification."

It is thus clear that the previous sale of the same land was disregarded as any index of